

Service Date: September 12, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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In the Matter of the Application of CLARK)	
FORK TELECOMMUNICATIONS, INC.,)	UTILITY DIVISION
and BLACKFOOT TELEPHONE)	
COOPERATIVE, INC. for Approval of an)	DOCKET NO. D97.7.124
IntraLATA Toll Dialing Parity)	
Implementation Plan.)	ORDER NO. 6010

ORDER GRANTING WITHDRAWAL AND CLOSING DOCKET

Background

1. On July 17, 1997 Clark Fork Telecommunications, Inc. (Clark Fork) and Blackfoot Telephone Cooperative, Inc. (Blackfoot) filed a joint application pursuant to 47 C.F.R. § 51.211 with the Montana Public Service Commission (Commission) for approval of IntraLATA Toll Dialing Parity Implementation Plans. The Commission issued a Notice of Application and Opportunity to File Comments and/or to Request a Hearing on August 8, 1997. The Notice requested comments on the specific question whether the Commission has jurisdiction to approve the dialing parity implementation plans for Blackfoot, a telephone cooperative exempt from Commission regulation, except for purposes of implementing the Telecommunications Act of 1996.¹ See Senate Bill 89, 1997 Mont. Laws ____ (signed Apr. 22, 1997).

2. Clark Fork and Blackfoot intend to provide interLATA toll services in 1997 and, according to rules promulgated by the Federal Communications Commission (FCC), must provide intraLATA toll dialing parity by the time they begin offering interLATA toll services. See 47 C.F.R. § 51.211(d). The FCC rules require a local exchange carrier (LEC), that is not a

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of 47 U.S.C.) (1996).

Bell Operating Company, if implementing in-region interLATA toll services between the period of August 8, 1997, and February 8, 1999, to simultaneously implement intraLATA dialing parity. The FCC's rules require state commissions to review and approve dialing parity implementation plans. If a state commission elects not to do so, or if it will not complete its review in time for the LEC to meet the FCC's deadlines, the FCC rules state that the LEC must file its plan with the FCC. *See* 47 C.F.R. § 51.213.

3. The FCC's dialing parity rules were challenged in California v. Federal Communications Comm'n, No. 96-3519, ___ F.3d ___ (8th Cir. 1997), and vacated in part by that court's opinion issued on August 22, 1997. On August 29, 1997, Clark Fork and Blackfoot filed a Notice of Withdrawal of Application requesting this Docket be closed. The Commission met in a scheduled work session on September 3, 1997 and voted 5-0 to grant the withdrawal and to close this Docket.

Discussion

4. The FCC's rules on dialing parity, 47 C.F.R. §§ 51.205-51.215, were set aside to the extent they pertain to intraLATA telecommunications traffic. In partially vacating the FCC's rules, the Court was not persuaded by the FCC's argument that the 1996 Act gives it parallel jurisdiction with the states over intraLATA dialing parity. California v. FCC, slip op. 18. The Court further stated that the FCC had exceeded its jurisdiction under 47 U.S.C. § 152(b) by adopting rules for intraLATA dialing parity. Id.

5. The pertinent FCC rule in this Docket is 47 C.F.R. § 51.211, which requires Montana LECs to submit their dialing parity implementation plans to the Commission for approval. Without this rule in place for intraLATA dialing parity, there is no other federal or state requirement that dialing parity implementation plans be submitted to the Commission for approval prior to implementation. Therefore, the Application in this Docket is moot. However, the Commission is presently considering rules for intraLATA dialing parity which may require Commission approval of certain aspects of dialing parity implementation.

Order

THEREFORE, based upon the foregoing, IT IS ORDERED that the Application filed by Blackfoot and Clark Fork for approval of their dialing parity implementation plans is DISMISSED and this Docket is closed.

DONE AND DATED this 3rd day of September, 1997 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.